

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027  
(Filed February 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING COMMUNITY TECHNOLOGY FOUNDATION OF  
CALIFORNIA REQUEST FOR OFFICIAL NOTICE**

On August 22, 2005, the Community Technology Foundation of California (CTFC) filed a "Request for Official Notice." Specifically, CTFC asks the Commission to take official notice of 12 separate items relating to reports and findings of various federal and state agencies. CTFC argues that the referenced items are relevant to consideration of the proposed merger. CTFC claims that the referenced items support the position that access to advanced technologies is vital for educational advancement and full participation in "the new digital economy," but that many of the groups most in need access to those technologies lag far behind in both access to and use of such technologies.

Applicants filed a response on September 1, 2005, in opposition to CTFC's request for Official Notice. Applicants argue that CTFC's request is improper, given the late stage of the proceeding, coming months after Protestants'

testimony was served. Applicants claim that CTFC is essentially trying to submit late-filed surrebuttal testimony, leaving the Applicants no opportunity to respond.

Applicants claim that CTFC's request is prejudicial to them, particularly in view of what they characterize as the arrangement reached between Applicants and CTFC. Applicants state that they met and conferred with CTFC to identify documents to be admitted in lieu of cross-examination of CTFC witnesses, and to provide CTFC the opportunity to counter-designate documents. Applicants claim that on this basis, they waived cross-examination of all CTFC's witnesses. Applicants argue that although CTFC could have presented the additional 12 documents for consideration at that time, CTFC waited until Applicants waived cross examination to attempt to introduce these new documents.

Applicants argue that no good cause exists to allow this additional information after the record has closed. Applicants further claim that the documents cited are of marginal relevance, and cumulative of information already addressed in testimony. Some of the information for which CTFC seeks official notice is not even specific to California. Items 5 through 9 on CTFC's list are reports issued by federal agencies concerning education, employment growth in various occupations, technology use, and telephone subscribership that do not even pertain to California.

Applicants argue that several parties, including CTFC, have previously introduced evidence regarding the general subject matter covered in the materials for which official notice is sought, and CTFC's request merely duplicates that data. CTFC request for Official Notice also includes reports by

the U.S. Department of Commerce and the CPUC (Items 8 and 12 in CTFC's request) that are already in the record.<sup>1</sup> (*See* Exs. 99 and 98, respectively.)

CTFC filed a third-round reply on September 6, 2005, seeking to refute arguments in opposition made by Applicants. CTFC characterize Applicants as confusing "testimony" with a request for official notice. CTFC point out that official government reports that are "not reasonably subject to dispute" are subject to official notice (see Cal. Evid. Code § 452). Thus CTFC claims that Applicants offer no valid basis to deny the request for official notice. CTFC also claims that Applicants misrepresent parties' meet-and-confer sessions as to the entry of stipulated exhibits. CTFC denies that parties' meet-and-confer session as to the entry of stipulated exhibits had anything to do with Applicants' cross-examination of CTFC witnesses.

## **Discussion**

Applicants have not presented a compelling reason to deny the CTFC request to take official notice of the referenced documents. As a basis for its opposition, Applicant claims that the request would constitute de fact testimony. Yet, taking official notice of the documents is not equivalent to admitting testimony into the evidentiary record. Unlike testimony which involves disputed issues of fact and policy, the documents cited by CTFC merely involve official government reports that are not reasonably subject to dispute. Thus, Applicants' arguments opposing the admission of late-filed testimony do not apply to CTFC's request merely for official notice.

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<sup>1</sup> CTFC Request, pp. 9, 13.

CTFC also explains that it did not engage in bad faith in connection with its meet-and-confer session to enter stipulated exhibits. Thus, there is no basis to deny the request for official notice based on Applicants' decision to waive cross-examination of CTFC witnesses.

Although it is not clear why CTFC did not make its request for official notice earlier, neither Applicants nor other parties, will be prejudiced by permitting CTFC to make references to these documents in its brief. Applicants, themselves, concede that similar statistics are already cited in various parties' testimony, and that this additional material would merely be cumulative. Therefore, Applicants cannot reasonably claim that they are unprepared to address, or respond to CTFC, in its brief on issues relating to the issues for which these documents would be cited. Moreover, Applicants' claim that the referenced material is cumulative constitutes a subjective judgment. Even though similar statistics may already be in the record, CTFC should be allowed to buttress its position by citing to these additional documents. Likewise, although certain documents only report national data, parties may argue as to what, if any, inferences may be drawn as to California. Accordingly the request for official notice is granted. As a practical matter, however, since Items 8 and 12 of CTFC's enumerated list are already in the record as exhibits, the request for official notice of those documents is moot.

**IT IS RULED** that the request of the Community Technology Foundation of California (CTFC) for official notice of the documents and materials attached to its pleading dated August 22, 2005 is hereby granted. Since Items 8 and 12 of CTFC's enumerated list are already in the record as exhibits, however, the request for official notice of those specific documents is moot.

Dated September 7, 2005, at San Francisco, California.

/s/ Thomas R. Pulsifer  
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Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Community Technology Foundation of California Request for Official Notice on all parties of record in this proceeding or their attorneys of record.

Dated September 7, 2005, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

**N O T I C E**

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